

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

REBA DEMARRIAS,

Plaintiff,

vs.

CHRIS DSCHAKK, et al.,

Defendants.

CV-16-00085-GF-BMM-JTJ

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS**

Counsel for Plaintiff Reba Demarrias filed a motion to withdraw. (Doc. 12.)

Ms. Demarrias was specifically warned that should she fail to respond to the Court, the motion to withdraw would be granted and this matter would be recommended for dismissal for failure to comply with a court order pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Doc. 13.) Ms. Demarrias failed to respond. (Doc. 14 at 1.)

The Court has the inherent power to sua sponte dismiss a case for lack of prosecution or failure to comply with a court order. *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1992). Dismissal, however, is a harsh penalty and should be imposed as a sanction only in extreme circumstances. *Id.* United States

Magistrate Judge John Johnston entered Findings and Recommendations in this matter on September 19, 2017. (Doc. 14.) Neither party filed objections.

When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). This Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston determined the following factors must be considered before dismissal is imposed as a sanction for failure to prosecute or failure to comply with a court order: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits. *Pagtalunan v. Galaza*, 291 F.3d 639 (9th Cir. 2002) (*citing Ferdik*, 963 F.2d at 1260-61). Judge Johnston, after considering the factors, found dismissal warranted regarding all four factors in this case.

Accordingly, Judge Johnston recommends that the Court dismiss this matter pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Doc. 14 at 4.) Judge Johnston, further, recommends that the docket should reflect that any appeal of this decision would not be taken in good faith pursuant to Rule 24(a)(3)(A) of

the Federal Rules of Appellate Procedure. *Id.* The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 14), is ADOPTED IN FULL.

IT IS ORDERED that this matter be dismissed. The Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the docket shall reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

DATED this 19th day of October, 2017.



Brian Morris
United States District Court Judge